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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/561,124	06/15/2006	Modechay Beyar	110/04969	6535	
44909 PRTS I	7590 06/19/200	99	EXAMINER		
P.O. Box 16446			PREBILIC, PAUL B		
Arlington, VA 22215			ART UNIT	PAPER NUMBER	
			3774		
			MAIL DATE	DELIVERY MODE	
			06/19/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)			
	10/561,124	BEYAR ET AL.			
Office Action Summary	Examiner	Art Unit			
	Paul B. Prebilic	3774			
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence ad	ldress		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).					
Status					
1) Responsive to communication(s) filed on					
	- action is non-final.				
3) Since this application is in condition for allowan	ice except for formal matters, pro	secution as to the	e merits is		
closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 45	3 O.G. 213.			
Disposition of Claims					
 4) ☐ Claim(s) 1-51 is/are pending in the application. 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) 1-51 are subject to restriction and/or expressions. 					
Application Papers	·				
9) The specification is objected to by the Examiner 10) The drawing(s) filed on is/are: a) access Applicant may not request that any objection to the of Replacement drawing sheet(s) including the correction of the output of the correction	epted or b) objected to by the Edrawing(s) be held in abeyance. See on is required if the drawing(s) is obj	e 37 CFR 1.85(a). ected to. See 37 CF	, ,		
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority documents 2. Certified copies of the priority documents 3. Copies of the certified copies of the priori application from the International Bureau * See the attached detailed Office action for a list of	s have been received. s have been received in Application ity documents have been received (PCT Rule 17.2(a)).	on No ed in this National	Stage		
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ite			

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-42, drawn to medical grade deformer.

Group II, claim(s) 43-46, drawn to a deformer.

Group III, claim(s) 47, drawn to a method of spinal surgery.

Group IV, claim(s) 48-51, drawn to a method of treating a bone.

The inventions listed as Groups I to IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: there is no special technical feature because Kuslich (US 5,059,193) provides evidence that deformable or pliable bodies were known to the art; see the front page thereof.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species Set 1 -

- A. deformers that are slotted (claims 2 and 36-42) or
- B. tubes that are not slotted (claim 3).

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Species Set 2 -

X. deformers that are rigid (claim 8) or

Y. flexible (claim 9).

Species Set 3

TP. truncated pyramid (claim 22) or

VA. asymmetrical volume (claim 23)

Applicant is required, in reply to this action, to elect a single species, **from**

each species set, to which the claims shall be restricted if no generic claim is finally

held to be allowable. The reply must also identify the claims readable on the elected

species, including any claims subsequently added. An argument that a claim is

allowable or that all claims are generic is considered non-responsive unless

accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration

of claims to additional species which are written in dependent form or otherwise include

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the

elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following

manner:

Species A (claims 2 and 36-42)

Species B (claim 3)

Species X (claim 8)

Species Y (claim 9)

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Species TP (claim 22) Species VA (claim 23)

The following claim(s) are generic: 1, 4-7, 10-21, 24-35, and 43-51.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the species are mutually exclusive from one other because they are clearly opposites.

A telephone call was made to Martin Moynihan on June 17, 2009 to request an oral election to the above restriction requirement, but did not result in an election being made. Mr. Moynihan requested that the requirement be put in written form and mailed out.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure

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outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 of 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/ Paul Prebilic Primary Examiner Art Unit 3774